

# Union Calendar No. 18

110TH CONGRESS  
1ST SESSION

# H. R. 985

[Report No. 110–42, Part 1]

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2007

Mr. WAXMAN (for himself, Mr. PLATTS, Mr. VAN HOLLEN, and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 9, 2007

Additional sponsors: Mr. CUMMINGS, Mrs. MALONEY of New York, Ms. NORTON, Mr. KUCINICH, Ms. MCCOLLUM of Minnesota, Ms. WATSON, Mr. COOPER, Mr. BRALEY of Iowa, Mr. YARMUTH, Mr. CLAY, Mr. KANJORSKI, Mr. DAVIS of Illinois, Mr. SHAYS, Mr. MURPHY of Connecticut, Mr. WELCH of Vermont, Mr. BERMAN, Mr. NADLER, Mr. GEORGE MILLER of California, Mr. ALLEN, Mr. ELLISON, Mr. ISRAEL, Mr. MCHUGH, Ms. ZOE LOFGREN of California, Mr. CONYERS, Ms. SCHWARTZ, and Mr. ACKERMAN

MARCH 9, 2007

Reported from the Committee on Oversight and Government Reform with amendments

[Omit the part struck through and insert the part printed in *italic*]

MARCH 9, 2007

Committee on Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# A BILL

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
 2 *tives of the United States of America in Congress assembled,*

## 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Whistleblower Protection Enhancement Act of 2007”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Clarification of disclosures covered.
- Sec. 3. Covered disclosures.
- Sec. 4. Rebuttable presumption.
- Sec. 5. Nondisclosure policies, forms, and agreements.
- Sec. 6. Exclusion of agencies by the President.
- Sec. 7. Disciplinary action.
- Sec. 8. Government Accountability Office study on revocation of security clearances.
- Sec. 9. Alternative recourse.
- Sec. 10. National security whistleblower rights.
- Sec. 11. Enhancement of contractor employee whistleblower protections.
- Sec. 12. Prohibited personnel practices affecting the Transportation Security Administration.
- Sec. 13. Clarification of whistleblower rights relating to scientific and other research.
- Sec. 14. Effective date.

## 8 **SEC. 2. CLARIFICATION OF DISCLOSURES COVERED.**

9 Section 2302(b)(8) of title 5, United States Code, is  
 10 amended—

11 (1) in subparagraph (A)—

1 (A) by striking “which the employee or ap-  
2 plicant reasonably believes evidences” and in-  
3 serting “, without restriction as to time, place,  
4 form, motive, context, or prior disclosure made  
5 to any person by an employee or applicant, in-  
6 cluding a disclosure made in the ordinary  
7 course of an employee’s duties, that the em-  
8 ployee or applicant reasonably believes is evi-  
9 dence of”; and

10 (B) in clause (i), by striking “a violation”  
11 and inserting “any violation”; and  
12 (2) in subparagraph (B)—

13 (A) by striking “which the employee or ap-  
14 plicant reasonably believes evidences” and in-  
15 serting “, without restriction as to time, place,  
16 form, motive, context, or prior disclosure made  
17 to any person by an employee or applicant, in-  
18 cluding a disclosure made in the ordinary  
19 course of an employee’s duties, of information  
20 that the employee or applicant reasonably be-  
21 lieves is evidence of”; and

22 (B) in clause (i), by striking “a violation”  
23 and inserting “any violation (other than a viola-  
24 tion of this section)”.

1 **SEC. 3. COVERED DISCLOSURES.**

2 Section 2302(a)(2) of title 5, United States Code, is  
3 amended—

4 (1) in subparagraph (B)(ii), by striking “and”  
5 at the end;

6 (2) in subparagraph (C)(iii), by striking the pe-  
7 riod at the end and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(D) ‘disclosure’ means a formal or informal  
10 communication, but does not include a communica-  
11 tion concerning policy decisions that lawfully exer-  
12 cise discretionary authority unless the ~~employee~~ *em-*  
13 *ployee or applicant* providing the disclosure reason-  
14 ably believes that the disclosure evidences—

15 “(i) any violation of any law, rule, or regu-  
16 lation; or

17 “(ii) gross mismanagement, a gross waste  
18 of funds, an abuse of authority, or a substantial  
19 and specific danger to public health or safety.”.

20 **SEC. 4. REBUTTABLE PRESUMPTION.**

21 Section 2302(b) of title 5, United States Code, is  
22 amended by adding at the end the following: “For pur-  
23 poses of paragraph (8), any presumption relating to the  
24 performance of a duty by an employee who has authority  
25 to take, direct others to take, recommend, or approve any  
26 personnel action may be rebutted by substantial evidence.

1 For purposes of paragraph (8), a determination as to  
2 whether an employee or applicant reasonably believes that  
3 such employee or applicant has disclosed information that  
4 evidences any violation of law, rule, regulation, gross mis-  
5 management, a gross waste of funds, an abuse of author-  
6 ity, or a substantial and specific danger to public health  
7 or safety shall be made by determining whether a disin-  
8 terested observer with knowledge of the essential facts  
9 known to or readily ascertainable by the employee or appli-  
10 cant could reasonably conclude that the actions of the  
11 Government evidence such violations, mismanagement,  
12 waste, abuse, or danger.”.

13 **SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREE-**  
14 **MENTS.**

15 (a) PERSONNEL ACTION.—Section 2302(a)(2)(A) of  
16 title 5, United States Code, is amended—

17 (1) in clause (x), by striking “and” at the end;

18 (2) by redesignating clause (xi) as clause (xii);

19 and

20 (3) by inserting after clause (x) the following:

21 “(xi) the implementation or enforcement of  
22 any nondisclosure policy, form, or agreement;  
23 and”.

24 (b) PROHIBITED PERSONNEL PRACTICE.—Section  
25 2302(b) of title 5, United States Code, is amended—

1           (1) in paragraph (11), by striking “or” at the  
2     end;

3           (2) by redesignating paragraph (12) as para-  
4     graph (14); and

5           (3) by inserting after paragraph (11) the fol-  
6     lowing:

7           “(12) implement or enforce any nondisclosure  
8     policy, form, or agreement, if such policy, form, or  
9     agreement does not contain the following statement:  
10    ‘These provisions are consistent with and do not su-  
11    persede, conflict with, or otherwise alter the em-  
12    ployee obligations, rights, or liabilities created by  
13    Executive Order No. 12958; section 7211 of title 5,  
14    United States Code (governing disclosures to Con-  
15    gress); section 1034 of title 10, United States Code  
16    (governing disclosures to Congress by members of  
17    the military); section 2302(b)(8) of title 5, United  
18    States Code (governing disclosures of illegality,  
19    waste, fraud, abuse, or public health or safety  
20    threats); the Intelligence Identities Protection Act of  
21    1982 (50 U.S.C. 421 and following) (governing dis-  
22    closures that could expose confidential Government  
23    agents); and the statutes which protect against dis-  
24    closures that could compromise national security, in-  
25    cluding sections 641, 793, 794, 798, and 952 of title

1 18, United States Code, and section 4(b) of the Sub-  
 2 versive Activities Control Act of 1950 (50 U.S.C.  
 3 783(b)). The definitions, requirements, obligations,  
 4 rights, sanctions, and liabilities created by such Ex-  
 5 ecutive order and such statutory provisions are in-  
 6 corporated into this agreement and are controlling.’;

7 “(13) conduct, or cause to be conducted, an in-  
 8 vestigation, other than any ministerial or nondis-  
 9 cretionary factfinding activities necessary for the  
 10 agency to perform its mission, of an employee or ap-  
 11 plicant for employment because of any activity pro-  
 12 tected under this section; or”.

13 **SEC. 6. EXCLUSION OF AGENCIES BY THE PRESIDENT.**

14 Section 2302(a)(2)(C) of title 5, United States Code,  
 15 is amended by striking clause (ii) and inserting the fol-  
 16 lowing:

17 “(ii)(I) the Federal Bureau of Investiga-  
 18 tion, the Central Intelligence Agency, the De-  
 19 fense Intelligence Agency, the National  
 20 Geospatial-Intelligence Agency, or the National  
 21 Security Agency; or

22 “(II) as determined by the President, any  
 23 Executive agency or unit thereof the principal  
 24 function of which is the conduct of foreign in-  
 25 telligence or counterintelligence activities, if the

1 determination (as that determination relates to  
2 a personnel action) is made before that per-  
3 sonnel action; or”.

4 **SEC. 7. DISCIPLINARY ACTION.**

5 Section 1215(a)(3) of title 5, United States Code, is  
6 amended to read as follows:

7 “(3)(A) A final order of the Board may impose—

8 “(i) disciplinary action consisting of removal,  
9 reduction in grade, debarment from Federal employ-  
10 ment for a period not to exceed 5 years, suspension,  
11 or reprimand;

12 “(ii) an assessment of a civil penalty not to ex-  
13 ceed \$1,000; or

14 “(iii) any combination of disciplinary actions  
15 described under clause (i) and an assessment de-  
16 scribed under clause (ii).

17 “(B) In any case in which the Board finds that an  
18 employee has committed a prohibited personnel practice  
19 under paragraph (8) or (9) of section 2302(b), the Board  
20 shall impose disciplinary action if the Board finds that the  
21 activity protected under such paragraph (8) or (9) (as the  
22 case may be) was the primary motivating factor, unless  
23 that employee demonstrates, by a preponderance of the  
24 evidence, that the employee would have taken, failed to



1 take, or threatened to take or fail to take the same per-  
2 sonnel action, in the absence of such protected activity.”.

3 **SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON**  
4 **REVOCATION OF SECURITY CLEARANCES.**

5 (a) REQUIREMENT.—The Comptroller General shall  
6 conduct a study of security clearance revocations, taking  
7 effect after 1996, with respect to personnel that filed  
8 claims under chapter 12 of title 5, United States Code,  
9 in connection therewith. The study shall consist of an ex-  
10 amination of the number of such clearances revoked, the  
11 number restored, and the relationship, if any, between the  
12 resolution of claims filed under such chapter and the res-  
13 toration of such clearances.

14 (b) REPORT.—Not later than 270 days after the date  
15 of the enactment of this Act, the Comptroller General shall  
16 submit to the Committee on Oversight and Government  
17 Reform of the House of Representatives and the Com-  
18 mittee on Homeland Security and Governmental Affairs  
19 of the Senate a report on the results of the study required  
20 by subsection (a).

21 **SEC. 9. ALTERNATIVE RECOURSE.**

22 (a) IN GENERAL.—Section 1221 of title 5, United  
23 States Code, is amended by adding at the end the fol-  
24 lowing:

1       “(k)(1) If, in the case of an employee, former em-  
2 ployee, or applicant for employment who seeks corrective  
3 action (or on behalf of whom corrective action is sought)  
4 from the Merit Systems Protection Board based on an al-  
5 leged prohibited personnel practice described in section  
6 2302(b)(8), no final order or decision is issued by the  
7 Board within 180 days after the date on which a request  
8 for such corrective action has been duly submitted (or, in  
9 the event that a final order or decision is issued by the  
10 Board, whether within that 180-day period or thereafter,  
11 then, within 90 days after such final order or decision is  
12 issued, and so long as such employee, former employee,  
13 or applicant has not filed a petition for judicial review of  
14 such order or decision under subsection (h))—

15               “(A) such employee, former employee, or appli-  
16 cant may, after providing written notice to the  
17 Board, bring an action at law or equity for de novo  
18 review in the appropriate United States district  
19 court, which shall have jurisdiction over such action  
20 without regard to the amount in ~~controversy~~; *con-*  
21 *troversy, and which action shall, at the request of ei-*  
22 *ther party to such action, be tried by the court with*  
23 *a jury*; and

24               “(B) in any such action, the court—

1 “(i) shall apply the standards set forth in  
2 subsection (e); and

3 “(ii) may award any relief which the court  
4 considers appropriate, including any relief de-  
5 scribed in subsection (g).

6 *An appeal from a final decision of a district court in an*  
7 *action under this paragraph may, at the election of the ap-*  
8 *pellant, be taken to the Court of Appeals for the Federal*  
9 *Circuit (which shall have jurisdiction of such appeal), in*  
10 *lieu of the United States court of appeals for the circuit*  
11 *embracing the district in which the action was brought.*

12 “(2) For purposes of this subsection, the term ‘appro-  
13 priate United States district court’, as used with respect  
14 to an alleged prohibited personnel practice, means the  
15 United States district court for the district in which the  
16 prohibited personnel practice is alleged to have been com-  
17 mitted, the judicial district in which the employment  
18 records relevant to such practice are maintained and ad-  
19 ministered, or the judicial district in which resides the em-  
20 ployee, former employee, or applicant for employment al-  
21 legedly affected by such practice.

22 “(3) This subsection applies with respect to any ap-  
23 peal, petition, or other request for corrective action duly  
24 submitted to the Board, whether pursuant to section  
25 1214(b)(2), the preceding provisions of this section, sec-

tion 7513(d), or any otherwise applicable provisions of law, rule, or regulation.”.

(b) REVIEW OF MSPB DECISIONS.—Section 7703(b) of such title 5 is amended—

(1) in the first sentence of paragraph (1), by striking “the United States Court of Appeals for the Federal Circuit” and inserting “the appropriate United States court of appeals”; and

(2) by adding at the end the following:

“(3) For purposes of the first sentence of paragraph (1), the term ‘appropriate United States court of appeals’ means the United States Court of Appeals for the Federal ~~Circuit~~. *Circuit, except that in the case of a prohibited personnel practice described in section 2302(b)(8) (other than a case that, disregarding this paragraph, would otherwise be subject to paragraph (2)), such term means the United States Court of Appeals for the Federal Circuit and any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court for purposes of such prohibited personnel practice.*”.

(c) COMPENSATORY DAMAGES.—Section 1221(g)(1)(A)(ii) of such title 5 is amended by striking all after “travel expenses,” and inserting “any other reasonable

1 *and foreseeable consequential damages, and compensatory*  
 2 *damages (including attorney’s fees, interest, reasonable ex-*  
 3 *pert witness fees, and costs).’.*

4 ~~(e)~~ (d) CONFORMING AMENDMENTS.—

5 (1) Section 1221(h) of such title 5 is amended  
 6 by adding at the end the following:

7 “(3) Judicial review under this subsection shall not  
 8 be available with respect to any decision or order as to  
 9 which the employee, former employee, or applicant has  
 10 filed a petition for judicial review under subsection (k).”.

11 (2) Section 7703(c) of such title 5 is amended  
 12 by striking “court.” and inserting “court, and in the  
 13 case of a prohibited personnel practice described in  
 14 section 2302(b)(8) brought under any provision of  
 15 law, rule, or regulation described in section  
 16 1221(k)(3), the employee or applicant shall have the  
 17 right to de novo review in accordance with section  
 18 1221(k).”.

19 **SEC. 10. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

20 (a) IN GENERAL.—Chapter 23 of title 5, United  
 21 States Code, is amended by inserting after section 2303  
 22 the following:

23 **“§ 2303a. National security whistleblower rights**

24 “(a) PROHIBITION OF REPRISALS.—

1           “(1) IN GENERAL.—In addition to any rights  
2       provided in section 2303 of this title, title VII of  
3       Public Law 105–272, or any other provision of law,  
4       an employee, former employee, or applicant for em-  
5       ployment in a covered agency may not be dis-  
6       charged, demoted, or otherwise discriminated  
7       against (including by denying, suspending, or revok-  
8       ing a security clearance, or by otherwise restricting  
9       access to classified or sensitive information) as a re-  
10      prisal for making a disclosure described in para-  
11      graph (2).

12           “(2) DISCLOSURES DESCRIBED.—A disclosure  
13      described in this paragraph is any disclosure of cov-  
14      ered information which is made—

15           “(A) by an employee, former employee, or  
16      applicant for employment in a covered agency  
17      (without restriction as to time, place, form, mo-  
18      tive, context, or prior disclosure made to any  
19      person by an employee, former employee, or ap-  
20      plicant, including a disclosure made in the  
21      course of an employee’s duties); and

22           “(B) to an authorized Member of Con-  
23      gress, an authorized official of an Executive  
24      agency, an authorized official of the Depart-  
25      ment of Justice, or the Inspector General of the

1 covered agency in which such employee is em-  
2 ployed, such former employee was employed, or  
3 such applicant seeks employment.

4 “(b) INVESTIGATION OF COMPLAINTS.—An em-  
5 ployee, former employee, or applicant for employment in  
6 a covered agency who believes that such employee, former  
7 employee, or applicant has been subjected to a reprisal  
8 prohibited by subsection (a) may submit a complaint to  
9 the Inspector General and the head of the covered agency.  
10 The Inspector General shall investigate the complaint and,  
11 unless the Inspector General determines that the com-  
12 plaint is frivolous, submit a report of the findings of the  
13 investigation within 120 days to the employee, former em-  
14 ployee, or applicant and to the head of the covered agency.

15 “(c) REMEDY.—

16 “(1) Within 180 days of the filing of the com-  
17 plaint, the head of the covered agency shall, taking  
18 into consideration the report of the Inspector Gen-  
19 eral under subsection (b) (if any), determine whether  
20 the employee, former employee, or applicant has  
21 been subjected to a reprisal prohibited by subsection  
22 (a), and shall either issue an order denying relief or  
23 shall implement corrective action to return the em-  
24 ployee, former employee, or applicant, as nearly as  
25 possible, to the position he would have held had the

1       reprisal not occurred, including voiding any directive  
2       or order denying, suspending, or revoking a security  
3       clearance or otherwise restricting access to classified  
4       or sensitive information that constituted a reprisal,  
5       as well as providing back pay and related benefits,  
6       medical costs incurred, travel expenses, ~~and any~~  
7       ~~other reasonable and foreseeable consequential dam-~~  
8       ~~ages including attorney's fees and costs.~~ *any other*  
9       *reasonable and foreseeable consequential damages, and*  
10      *compensatory damages (including attorney's fees, in-*  
11      *terest, reasonable expert witness fees, and costs).* If  
12      the head of the covered agency issues an order deny-  
13      ing relief, he shall issue a report to the employee,  
14      former employee, or applicant detailing the reasons  
15      for the denial.

16           “(2)(A) If the head of the covered agency, in  
17      the process of implementing corrective action under  
18      paragraph (1), voids a directive or order denying,  
19      suspending, or revoking a security clearance or oth-  
20      erwise restricting access to classified or sensitive in-  
21      formation that constituted a reprisal, the head of the  
22      covered agency may re-initiate procedures to issue a  
23      directive or order denying, suspending, or revoking  
24      a security clearance or otherwise restricting access  
25      to classified or sensitive information only if those re-



1 initiated procedures are based exclusively on national  
2 security concerns and are unrelated to the actions  
3 constituting the original reprisal.

4 “(B) In any case in which the head of a covered  
5 agency re-initiates procedures under subparagraph  
6 (A), the head of the covered agency shall issue an  
7 unclassified report to its Inspector General and to  
8 authorized Members of Congress (with a classified  
9 annex, if necessary), detailing the circumstances of  
10 the agency’s re-initiated procedures and describing  
11 the manner in which those procedures are based ex-  
12 clusively on national security concerns and are unre-  
13 lated to the actions constituting the original reprisal.  
14 The head of the covered agency shall also provide  
15 periodic updates to the Inspector General and au-  
16 thorized Members of Congress detailing any signifi-  
17 cant actions taken as a result of those procedures,  
18 and shall respond promptly to inquiries from author-  
19 ized Members of Congress regarding the status of  
20 those procedures.

21 “(3) If the head of the covered agency has not  
22 made a determination under paragraph (1) within  
23 180 days of the filing of the complaint (or he has  
24 issued an order denying relief, in whole or in part,  
25 whether within that 180-day period or thereafter,

1 then, within 90 days after such order is issued), the  
2 employee, former employee, or applicant for employ-  
3 ment may bring an action at law or equity for de  
4 novo review to seek any corrective action described  
5 in paragraph (1) in the appropriate United States  
6 district court (as defined by section 1221(k)(2)),  
7 which shall have jurisdiction over such action with-  
8 out regard to the amount in ~~controversy~~. *con-*  
9 *troversy, and which action shall, at the request of ei-*  
10 *ther party to such action, be tried by the court with*  
11 *a jury. A petition to review a final decision under*  
12 *this paragraph shall be filed in the United States*  
13 *Court of Appeals for the Federal Circuit. An appeal*  
14 *from a final decision of a district court in an action*  
15 *under this paragraph may, at the election of the ap-*  
16 *pellant, be taken to the Court of Appeals for the Fed-*  
17 *eral Circuit (which shall have jurisdiction of such ap-*  
18 *peal), in lieu of the United States court of appeals for*  
19 *the circuit embracing the district in which the action*  
20 *was brought.*

21 “(4) An employee, former employee, or appli-  
22 cant adversely affected or aggrieved by an order  
23 issued under paragraph (1), or who seeks review of  
24 any corrective action determined under paragraph  
25 (1), may obtain judicial review of such order or de-

1 termination in the United States Court of Appeals  
 2 for the Federal ~~Circuit~~. *Circuit or any United States*  
 3 *court of appeals having jurisdiction over appeals from*  
 4 *any United States district court which, under section*  
 5 *1221(k)(2), would be an appropriate United States*  
 6 *district court.* No petition seeking such review may  
 7 be filed more than 60 days after issuance of the  
 8 order or the determination to implement corrective  
 9 action by the head of the agency. Review shall con-  
 10 form to chapter 7.

11 “(5)(A) If, in any action for damages or relief  
 12 under paragraph (3) or (4), an Executive agency  
 13 moves to withhold information from discovery based  
 14 on a claim that disclosure would be inimical to na-  
 15 tional security by asserting the privilege commonly  
 16 referred to as the ‘state secrets privilege’, and if the  
 17 assertion of such privilege prevents the ~~plaintiff~~ *em-*  
 18 *ployee, former employee, or applicant* from estab-  
 19 lishing an element in support of the ~~plaintiff’s~~ *em-*  
 20 *ployee’s, former employee’s, or applicant’s* claim, the  
 21 court shall resolve the disputed issue of fact or law  
 22 in favor of the ~~plaintiff~~ *employee, former employee, or*  
 23 *applicant*, provided that an Inspector General inves-  
 24 tigation under subsection (b) has resulted in sub-  
 25 stantial confirmation of that element, or those ele-

1       ments, of the ~~plaintiff's~~ *employee's, former employ-*  
2       *ee's, or applicant's* claim.

3               “(B) In any case in which an Executive agency  
4       asserts the privilege commonly referred to as the  
5       ‘state secrets privilege’, whether or not an Inspector  
6       General has conducted an investigation under sub-  
7       section (b), the head of that agency shall, at the  
8       same time it asserts the privilege, issue a report to  
9       authorized Members of Congress, accompanied by a  
10      classified annex if necessary, describing the reasons  
11      for the assertion, explaining why the court hearing  
12      the matter does not have the ability to maintain the  
13      protection of classified information related to the as-  
14      sertion, detailing the steps the agency has taken to  
15      arrive at a mutually agreeable settlement with the  
16      employee, former employee, or applicant for employ-  
17      ment, setting forth the date on which the classified  
18      information at issue will be declassified, and pro-  
19      viding all relevant information about the underlying  
20      substantive matter.

21           “(d) APPLICABILITY TO NON-COVERED AGENCIES.—  
22   An employee, former employee, or applicant for employ-  
23   ment in an Executive agency (or element or unit thereof)  
24   that is not a covered agency shall, for purposes of any  
25   disclosure of covered information (as described in sub-

1 section (a)(2)) which consists in whole or in part of classi-  
2 fied or sensitive information, be entitled to the same pro-  
3 tections, rights, and remedies under this section as if that  
4 Executive agency (or element or unit thereof) were a cov-  
5 ered agency.

6 “(e) CONSTRUCTION.—Nothing in this section may  
7 be construed—

8 “(1) to authorize the discharge of, demotion of,  
9 or discrimination against an ~~employee~~ *employee*,  
10 *former employee, or applicant for employment* for a  
11 disclosure other than a disclosure protected by sub-  
12 section (a) or (d) of this section or to modify or der-  
13 ogate from a right or remedy otherwise available to  
14 an employee, former employee, or applicant for em-  
15 ployment; or

16 “(2) to preempt, modify, limit, or derogate any  
17 rights or remedies available to an employee, former  
18 employee, or applicant for employment under any  
19 other provision of law, rule, or regulation (including  
20 the Lloyd-La Follette Act).

21 No court or administrative agency may require the ex-  
22 haustion of any right or remedy under this section as a  
23 condition for pursuing any other right or remedy otherwise  
24 available to an employee, former employee, or applicant

1 under any other provision of law, rule, or regulation (as  
2 referred to in paragraph (2)).

3 “(f) DEFINITIONS.—For purposes of this section—

4 “(1) the term ‘covered information’, as used  
5 with respect to an employee, former employee, or ap-  
6 plicant for employment, means any information (in-  
7 cluding classified or sensitive information) which the  
8 employee, former employee, or applicant reasonably  
9 believes evidences—

10 “(A) any violation of any law, rule, or reg-  
11 ulation; or

12 “(B) gross mismanagement, a gross waste  
13 of funds, an abuse of authority, or a substantial  
14 and specific danger to public health or safety;

15 “(2) the term ‘covered agency’ means—

16 “(A) the Federal Bureau of Investigation,  
17 the Central Intelligence Agency, the Defense In-  
18 telligence Agency, the National Geospatial-In-  
19 telligence Agency, the National Security Agen-  
20 cy, and the National Reconnaissance Office;  
21 and

22 “(B) any other Executive agency, or ele-  
23 ment or unit thereof, determined by the Presi-  
24 dent under section 2302(a)(2)(C)(ii)(II) to have

1 as its principal function the conduct of foreign  
2 intelligence or counterintelligence activities;

3 “(3) the term ‘authorized Member of Congress’  
4 means a member of the House Permanent Select  
5 Committee on Intelligence, the Senate Select Com-  
6 mittee on Intelligence, the House Committee on  
7 Oversight and Government Reform, the Senate Com-  
8 mittee on Homeland Security and Governmental Af-  
9 fairs, and the committees of the House of Rep-  
10 resentatives or the Senate that have oversight over  
11 the program about which the covered information is  
12 disclosed;

13 “(4) the term ‘authorized official of an Execu-  
14 tive agency’ shall have such meaning as the Office  
15 of Personnel Management shall by regulation pre-  
16 scribe, except that such term shall, with respect to  
17 any employee, former employee, or applicant for em-  
18 ployment in an agency, include—

19 “(A) the immediate supervisor of the em-  
20 ployee or former employee and each successive  
21 supervisor (immediately above such immediate  
22 supervisor) within the employee’s or former em-  
23 ployee’s chain of authority (as determined  
24 under such regulations); and

1 “(B) the head, general counsel, and om-  
2 budsman of such agency; and

3 “(5) the term ‘authorized official of the Depart-  
4 ment of Justice’ means any employee of the Depart-  
5 ment of Justice, the duties of whose position include  
6 the investigation, enforcement, or prosecution of any  
7 law, rule, or regulation.”.

8 (b) CLERICAL AMENDMENT.—The table of sections  
9 for chapter 23 of title 5, United States Code, is amended  
10 by inserting after the item relating to section 2303 the  
11 following:

“2303a. National security whistleblower rights.”.

12 **SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE**  
13 **WHISTLEBLOWER PROTECTIONS.**

14 (a) CIVILIAN AGENCY CONTRACTS.—Section 315(c)  
15 of the Federal Property and Administrative Services Act  
16 of 1949 (41 U.S.C. 265(c)) is amended—

17 (1) in paragraph (1), by striking “If the head”  
18 and all that follows through “actions:” and inserting  
19 the following: “Not later than 180 days after sub-  
20 mission of a complaint under subsection (b), the  
21 head of the executive agency concerned shall deter-  
22 mine whether the contractor concerned has subjected  
23 the complainant to a reprisal prohibited by sub-  
24 section (a) and shall either issue an order denying



1 relief or shall take one or more of the following ac-  
 2 tions:”; and

3 (2) by redesignating paragraph (3) as para-  
 4 graph (4) and adding after paragraph (2) the fol-  
 5 lowing new paragraph (3):

6 “(3) If the head of an executive agency has not issued  
 7 an order within 180 days after the submission of a com-  
 8 plaint under subsection (b) and there is no showing that  
 9 such delay is due to the bad faith of the complainant, the  
 10 complainant shall be deemed to have exhausted his admin-  
 11 istrative remedies with respect to the complaint, and the  
 12 complainant may bring an action at law or equity for de  
 13 novo review to seek compensatory damages and other re-  
 14 lief available under this section in the appropriate district  
 15 court of the United States, which shall have jurisdiction  
 16 over such an action without regard to the amount in ~~con-~~  
 17 ~~troversy.~~ *controversy, and which action shall, at the request*  
 18 *of either party to such action, be tried by the court with*  
 19 *a jury.”.*

20 (b) ARMED SERVICES CONTRACTS.—Section 2409(c)  
 21 of title 10, United States Code, is amended—

22 (1) in paragraph (1), by striking “If the head”  
 23 and all that follows through “actions:” and inserting  
 24 the following: “Not later than 180 days after sub-  
 25 mission of a complaint under subsection (b), the

1 head of the agency concerned shall determine wheth-  
2 er the contractor concerned has subjected the com-  
3 plainant to a reprisal prohibited by subsection (a)  
4 and shall either issue an order denying relief or shall  
5 take one or more of the following actions:”; and

6 (2) by redesignating paragraph (3) as para-  
7 graph (4) and adding after paragraph (2) the fol-  
8 lowing new paragraph (3):

9 “(3) If the head of an agency has not issued an order  
10 within 180 days after the submission of a complaint under  
11 subsection (b) and there is no showing that such delay  
12 is due to the bad faith of the complainant, the complainant  
13 shall be deemed to have exhausted his administrative rem-  
14 edies with respect to the complaint, and the complainant  
15 may bring an action at law or equity for de novo review  
16 to seek compensatory damages and other relief available  
17 under this section in the appropriate district court of the  
18 United States, which shall have jurisdiction over such an  
19 action without regard to the amount in ~~controversy~~. *con-*  
20 *troversy, and which action shall, at the request of either*  
21 *party to such action, be tried by the court with a jury.”.*

1 **SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING**  
2 **THE TRANSPORTATION SECURITY ADMINIS-**  
3 **TRATION.**

4 (a) IN GENERAL.—Chapter 23 of title 5, United  
5 States Code, is amended—

6 (1) by redesignating sections 2304 and 2305 as  
7 sections 2305 and 2306, respectively; and

8 (2) by inserting after section 2303a (as inserted  
9 by section 10) the following:

10 **“§ 2304. Prohibited personnel practices affecting the**  
11 **Transportation Security Administration**

12 “(a) IN GENERAL.—Notwithstanding any other pro-  
13 vision of law, any individual holding or applying for a posi-  
14 tion within the Transportation Security Administration  
15 shall be covered by—

16 “(1) the provisions of section 2302(b)(1), (8),  
17 and (9);

18 “(2) any provision of law implementing section  
19 2302(b)(1), (8), or (9) by providing any right or  
20 remedy available to an employee or applicant for em-  
21 ployment in the civil service; and

22 “(3) any rule or regulation prescribed under  
23 any provision of law referred to in paragraph (1) or  
24 (2).

25 “(b) RULE OF CONSTRUCTION.—Nothing in this sec-  
26 tion shall be construed to affect any rights, apart from

1 those described in subsection (a), to which an individual  
 2 described in subsection (a) might otherwise be entitled  
 3 under law.

4 “(c) EFFECTIVE DATE.—This section shall take ef-  
 5 fect as of the date of the enactment of this section.”.

6 (b) CLERICAL AMENDMENT.—The table of sections  
 7 for chapter 23 of title 5, United States Code, is amended  
 8 by striking the items relating to sections 2304 and 2305,  
 9 respectively, and by inserting the following:

“2304. Prohibited personnel practices affecting the Transportation Security Ad-  
 ministration.

“2305. Responsibility of the Government Accountability Office.

“2306. Coordination with certain other provisions of law.”.

10 **SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RE-**  
 11 **LATING TO SCIENTIFIC AND OTHER RE-**  
 12 **SEARCH.**

13 Section 2302 of title 5, United States Code, is  
 14 amended by adding at the end the following:

15 “(f) As used in section 2302(b)(8), the term ‘abuse  
 16 of authority’ includes—

17 “(1) any action that compromises the validity  
 18 or accuracy of federally funded research or analysis;  
 19 and

20 “(2) the dissemination of false or misleading  
 21 scientific, medical, or technical information.”.

1 **SEC. 14. EFFECTIVE DATE.**

2       This Act shall take effect 30 days after the date of  
3 the enactment of this Act, except as provided in the  
4 amendment made by section 12(a)(2).

Union Calendar No. 18

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 985**

[Report No. 110-42, Part 1]

**A BILL**

To amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes.

MARCH 9, 2007

Reported from the Committee on Oversight and  
Government Reform with amendments

MARCH 9, 2007

Committee on Armed Services discharged; committed to  
the Committee of the Whole House on the State of the  
Union and ordered to be printed